

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) \_\_\_\_\_ given as security for a loan in the amount of \$ \_\_\_\_\_ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) \_\_\_\_\_ given to (secured creditor) \_\_\_\_\_ as security for a loan (state type of loan, i.e., revolving line of credit, \_\_\_\_\_ if known) in the amount of \$ \_\_\_\_\_.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of re-assignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

[52 FR 6522, Mar. 4, 1987]

#### APPENDIX I TO SUBPART E OF PART 1980—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 ("Disaster Assistance for Rural Business Enterprises") of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial

distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that re-finance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as Exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103-354 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee."

(3) Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement."

B. *Loan purpose.* Except for §§ 1980.411(a)(11), 1980.412, and section C., below, loan proceeds may be used for purposes described in § 1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in § 1980.411(a)(11), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See § 1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of

this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in § 1980.413, FmHA or its successor agency under Public Law 103-354 will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed \$500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by FmHA or its successor agency under Public Law 103-354 on or before September 30, 1991.

E. *Borrower equity requirements.* See § 1980.441. In lieu of the borrower equity requirements in § 1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of § 1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See § 1980.451. All requirements of § 1980.451 remain in effect. But, in addition to the information required as part of a preapplication under § 1980.451(f), and unless previously submitted, as a part of an application under § 1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business

interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See §1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA or its successor agency under Public Law 103-354 1980-69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See §1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or "insured" loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with "insured" or direct loans do not apply to D&D loans. All D&D loans are FmHA or its successor agency under Public Law 103-354 guaranteed loans. FmHA or its successor agency under Public Law 103-354 has no authority to make D&D loans directly to borrowers.

EXHIBIT A TO APPENDIX I—LENDER'S AGREEMENT; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)<sup>1</sup>

*Form FmHA or its successor agency under Public Law 103-354 1980-68 (11-88)*

FmHA or its successor agency under Public Law 103-354 Loan Ident. No. \_\_\_\_\_

(Lender) of \_\_\_\_\_

<sup>1</sup>Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

has made a loan(s) to \_\_\_\_\_

(Borrower) \_\_\_\_\_

in the principal amount of \$ \_\_\_\_\_  
as evidenced by \_\_\_\_\_ note(s) (include Bond as appropriate) described as follows: \_\_\_\_\_

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) has entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee)" (Form FmHA or its successor agency under Public Law 103-354 1980-69) or has issued a "Conditional Commitment for Guarantee" (Form FmHA or its successor agency under Public Law 103-354 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed \_\_\_\_\_% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement. The maximum loss guaranteed is governed by 7 CFR Part 1980 Subpart E Appendix I and the Loan Note Guarantee (Drought and Disaster Guaranteed Loans)

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed \_\_\_\_\_ percent of the principal (Maximum \$ \_\_\_\_\_).

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement Drought and Disaster Guaranteed Loan (Assignment Guarantee Agreement) attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor

agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan." Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103-354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103-354 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loan" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103-354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103-354 will provide the Lender with a Form FmHA or its successor

agency under Public Law 103-354 1980-69, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA or its successor agency under Public Law 103-354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103-354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103-354 will issue the appropriate Loan Note Guarantees—Drought and Disaster Guaranteed Loan to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—Drought and Disaster Guaranteed Loan which will be cancelled by FmHA or its successor agency under Public Law 103-354.

3. *Participations.* a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its portfolio or retain a minimum of 5 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan to the extent of the portion of loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan, and this agreement, and the FmHA or its successor agency under Public Law 103-354 program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA or its successor agency under Public Law 103-354 program regulations not

inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103-354 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103-354 has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103-354. Subsequent to full disbursement completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103-354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103-354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103-354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103-354's written concurrence. It is the Lender's responsibility to maximize the collection of interest due on the loan. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase from the Holder(s) by FmHA or its successor agency under Public Law 103-354 if such interest can be collected. If FmHA or its successor agency under Public Law 103-354 has repurchased, FmHA or its successor agency under Public Law 103-354 is equally so entitled.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103-354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$\_\_\_\_\_ without written concurrence of FmHA or its successor agency under Public Law 103-354; the

Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103-354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103-354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103-354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103-354 regulations.

10. Providing FmHA or its successor agency under Public Law 103-354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103-354 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103-354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default. A. The Lender will notify FmHA or its successor agency under Public Law 103-354 when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103-354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103-354 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA

or its successor agency under Public Law 103-354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103-354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103-354's, Lender's, and the Holder(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103-354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion within 30 days after written demand to FmHA or its successor agency under Public Law 103-354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder

on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal, due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103-354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103-354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103-354 has purchased, FmHA or its successor agency under Public Law 103-354 is equally entitled.

The FmHA or its successor agency under Public Law 103-354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103-354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103-354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due to the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee, nor does such purchase waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 from the Holder against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103-354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103-354 repurchases from a Holder, FmHA or its successor agency under Public Law 103-354 will pay the Holder only the amounts due the Holder. FmHA or its successor agency under Public Law 103-354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103-354 and no such fee is collectible from FmHA or its successor agency under Public Law 103-354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103-354. When FmHA or its successor agency under Public Law 103-354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103-354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103-354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103-354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103-354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

*A. Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103-354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103-354 with:

1. Such proof as FmHA or its successor agency under Public Law 103-354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of \$200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103-354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103-354 and the Lender.

*B. FmHA or its successor agency under Public Law 103-354's response to Lender's liquidation plan.* FmHA or its successor agency under Public Law 103-354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If

FmHA or its successor agency under Public Law 103-354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103-354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103-354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103-354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103-354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103-354 all rights and interests necessary to allow FmHA or its successor agency under Public Law 103-354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103-354.

2. FmHA or its successor agency under Public Law 103-354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103-354 include any one or combination of the usual commercial methods of liquidation.

*C. Acceleration.* The Lender or FmHA or its successor agency under Public Law 103-354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103-354 or the Lender, as the case may be.

*D. Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103-354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103-354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103-354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103-354 1980-43, "Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103-354." When FmHA or its successor agency under Public



Law 103-354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103-354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103-354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103-354. Payment will be made in accordance with applicable FmHA or its successor agency under Public Law 103-354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103-354 an estimate of the loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103-354 will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103-354 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103-354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103-354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103-354 449-30 by the Lender to FmHA or its successor agency under Public Law 103-354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103-354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103-354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise

assist FmHA or its successor agency under Public Law 103-354 in making the investigation. If FmHA or its successor agency under Public Law 103-354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103-354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103-354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103-354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

F. *Maximum amount of interest loss payment.* Interest is not covered by the guarantee.

G. *Application of FmHA or its successor agency under Public Law 103-354 loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103-354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103-354 449-30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103-354 in order to close out the files at the FmHA or its successor agency under Public Law 103-354 Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral

unless the costs have been previously determined by the Lender (with FmHA or its successor agency under Public Law 103-354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103-354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA or its successor agency under Public Law 103-354 within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.* Protective advances will not be covered by the guarantee.

XIII. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103-354 even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103-354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103-354 and the Lender. FmHA or its successor agency under Public Law 103-354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.* Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guarantee portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery).

XVI. *Other Requirements.* This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103-354 regulations not inconsistent with this agreement.

XVII. *Execution of Agreements.* If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103-354 with respect to execution of such contract. FmHA or its successor agency under Public Law 103-354 in no way warrants that such a contract has been or will be executed.

XVIII. *Notices.* All notices and actions will be initiated through FmHA or its successor agency under Public Law 103-354 for—

(State) with mailing address at the  
Date of this instrument \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Lender:

By \_\_\_\_\_

Title \_\_\_\_\_

United States of America

Farmers Home Administration or its successor agency under Public Law 103-354

By \_\_\_\_\_

Title \_\_\_\_\_

Attest: \_\_\_\_\_ (SEAL)

EXHIBIT B TO APPENDIX I—LOAN NOTE GUARANTEE; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)

*Form FmHA or its successor agency under  
Public Law 103-354 1980-69 (11-88)*

Borrower \_\_\_\_\_

Lender \_\_\_\_\_

Lender's Address \_\_\_\_\_

State \_\_\_\_\_

County \_\_\_\_\_

Date of Note \_\_\_\_\_

FmHA or its successor agency under Public Law 103-354 Loan Identification Number \_\_\_\_\_

Lender's IRS ID Tax Number \_\_\_\_\_

Principal Amount of Loan \$ \_\_\_\_\_

The guaranteed portion of the loan is \$ \_\_\_\_\_ which is \_\_\_\_\_ (%)

percent of loan principal. The principal amount of loan is evidenced by \_\_\_\_\_ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note \_\_\_\_\_ in the face amount of \$ \_\_\_\_\_ and is number \_\_\_\_\_ of \_\_\_\_\_.

Lender's Identifying Number \_\_\_\_\_

Face Amount \_\_\_\_\_

Percent of Total Face Amount \_\_\_\_\_

## Amount Guaranteed \_\_\_\_\_

Maximum Loss Guaranteed Governed by 7  
CFR Part 1980, Subpart E, Appendix I

Total \$ \_\_\_\_\_ 100% \$ \_\_\_\_\_

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103-354 of the United States Department of Agriculture (herein called "FmHA or its successor agency under Public Law 103-354"), pursuant to the Disaster Assistance Act (P.L. 100-387, 7 USC ) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including principal indebtedness as evidenced by said note(s) or by assumption agreement(s), or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) (Maximum \$ ). No capitalized interest is guaranteed.

*Definition of Holder.* The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," is used.

*Definition of Lender.* The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 CFR Part 1980. The Lender is also the party requesting a loan guarantee.

## Conditions of Guarantee

1. *Loan Servicing.* Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. *Priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103-354 any payment made by FmHA or its successor agency under Public Law 103-354 to Holder which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make.

5. *Payments.* Lender will receive all payments of principal, or interest, on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. *Protective Advances.* Protective advances made by Lender will not be guaranteed.

7. *Repurchase by Lender.* The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest

due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision.

8. FmHA or its successor agency under Public Law 103-354 Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103-354 will purchase from Holder the unpaid principal balance of the guaranteed portion less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103-354 from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103-354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103-354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103-354 has purchased, FmHA or its successor agency under Public Law 103-354 is equally entitled.

The FmHA or its successor agency under Public Law 103-354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly

provide the FmHA or its successor agency under Public Law 103-354 with the information necessary for FmHA or its successor agency under Public Law 103-354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment of FmHA or its successor agency under Public Law 103-354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103-354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.* Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed by any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and that FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.* If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans.

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a. The lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103-354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103-354 at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion.* The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates.* This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103-354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103-354.

13. *Settlement.* The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. *Notices.* All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103-354 for \_\_\_\_\_ (State) with mailing address at the date of this instrument:

United States of America  
Farmers Home Administration or its successor agency under Public Law 103-354  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
(Date)  
Assumption Agreement by \_\_\_\_\_  
dated \_\_\_\_\_, 19\_\_\_\_  
Assumption Agreement by \_\_\_\_\_  
dated \_\_\_\_\_, 19\_\_\_\_

EXHIBIT C TO APPENDIX I—ASSIGNMENT GUARANTEE AGREEMENT—DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)<sup>1</sup>

FmHA or its successor agency under Public Law 103-354 Loan Ident. No. \_\_\_\_\_

<sup>1</sup>Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data

Form FmHA or its successor agency under Public Law 103-354 1980-70 (11-88)

of \_\_\_\_\_  
(Lender) has made a loan to \_\_\_\_\_  
in the principal amount of \$ \_\_\_\_\_  
as evidenced by a note(s) dated \_\_\_\_\_  
The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee) (Form FmHA or its successor agency under Public Law 103-354 1980-69) with the Lender applicable to such loan to guarantee the loan not to exceed \_\_\_\_\_ % of the amount of the principal advanced.

of \_\_\_\_\_  
(Holder) desires to purchase from Lender \_\_\_\_\_ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is \$ \_\_\_\_\_. Lender hereby assigns to Holder \_\_\_\_\_ % of the guaranteed portion of the loan representing \$ \_\_\_\_\_ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103-354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103-354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing.* The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

**RHS, RBS, RUS, FSA, USDA**

**Pt. 1980, Subpt. E, App. K**

their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee.* Holder agrees that Lender will retain a servicing fee of \_\_\_\_\_ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder.* The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 CFR Part 1980 now in effect and future FmHA or its successor agency under Public Law 103-354 program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan attached to or relating to a note which provides for payment of interest on interest is void.

6. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103-354 for any payment made by FmHA or its successor agency under Public Law 103-354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103-354 1980-70 to effectuate the transfer.

Lender: \_\_\_\_\_  
Address: \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Attest: \_\_\_\_\_  
(SEAL)  
Holder: \_\_\_\_\_  
Address: \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Attest: \_\_\_\_\_  
(SEAL)  
United States of America  
Farmers Home Administration or its successor agency under Public Law 103-354  
Address: \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

[54 FR 5, Jan. 3, 1989, as amended at 54 FR 14792, Apr. 13, 1989; 54 FR 26946, June 27, 1989]

**APPENDIX J TO SUBPART E OF PART 1980  
[RESERVED]**

**APPENDIX K TO SUBPART E OF PART  
1980—REGULATIONS FOR LOAN GUAR-  
ANTEES FOR DISASTER ASSISTANCE  
FOR RURAL BUSINESS ENTERPRISES**

*A. In general*

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or \$2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, freeze, storm, excessive moisture, earthquake, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103-354 1980-71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1980-72, "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will